IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10115 of 1999

For Approval and Signature:
Hon'ble MR.JUSTICE A.K.TRIVEDI

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NANA JAGANATH PATIL
Versus
COMMISSIONER OF POLICE

Appearance:
MS BANNA S DUTTA for Petitioner
MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI
Date of decision: 15/02/2000

ORAL JUDGEMENT

#. Heard Ms. Banna Datta, learned advocate for the petitioner and Mr.A. J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 14-5-1999 passed by respondent No.1 - The Commissioner of Police, Surat against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicate that three criminal cases were registered vide C.R.No : 353/98, 390/98 and 215/99 against the petitioner on Athva

Lines Police Station, Rander Police Station and Udhana police station respectively. That all three cases are pending for trial.

#. The grounds also indicate that two witnesses on assurance of their anonymity have given their statement on 26-4-99 against the anti social activities of the petitioner and have referred to incidents alleged to have occurred on 10-12-99 and 21-12-99 respectively. That on the basis of the said material, the respondent No. 1 The Commissioner of Police, Surat City the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social activities. That despite the order of externment passed on 25-11-97, externing the petitioner from the area of Surat City, rural and District Valsad. Even though the petitioner had committed a breach of order entered into the area of Surat City and has committed offence made punishable under Section 457, 380 read with Section 114 of IPC. That thereby in order to prevent the petitioner forthwith from continuing his anti social activities, it is necessary to pass the detention order and hence, the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the unexplained delay in taking the action by passing the detention order.

#. In the matter of PRADEEP NILKANTH PATURKER VS. STATE OF MAHARASTHRA reported in AIR 1994 SC 656, the Hon'ble Supreme Court has observed that if the delay in passing the impugned order is not satisfactorily explained, live link between the alleged anti social activities and taking of action by passing order having been snapped, the detention order is bad in law. That this Court also in the matter of ELESH PATEL VS. THE COMMISSIONER OF POLICE, AHMEDABAD reported in 1997 (1) GLH 381 has also followed the said proposition by referring the various authorities of Hon'ble Supreme Court and has held that in the absence of reasonable explanation for delayed action, the detention order cannot be sustained.

#. In the instant case, on scrutiny of papers, it is found that the petitioner was arrested on 2-2-99in the criminal case registered vide C.R. No : 390 of 1998. That the petitioner was in judicial custody. The grounds

of detention disclosed the fact that the statement of witnesses were recorded on 26-4-99 wherein, information regarding the incidents alleged to have taken on 10-12-98 and 28-12-98 were disclosed. However, the grounds of detention does not disclose any explanation that the despite of these information, since 2-2-1999, why the action has not been taken till the date of passing of the

impugned order on 14-5-99. That petitioner being in judicial custody could not have continued his activities till 14-5-99 and as such, the live link between the said activities and the action taken was snapped.

#. The learned AGP Mr.A.J.Desai has fairly stated at bar that in absence of the affidavit on behalf of the either of the respondents, the said delay could not be explained.

#. Thus, the inordinate delay in taking the impugned action without any reasonable explanation for the period from 2-2-1999 to 14-5-1999 is fatal to the impugned order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

##. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 14-5-99 passed by respondent No. 1 - The Commissioner of Police, Surat City against the petitioner is hereby quashed and set aside. The petitioner - NANA JAGANATH PATIL is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 15-2-2000 [A.K.Trivedi, J.]
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